



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: Commissioner of Patents and Trademarks  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,936	10/11/2001	Harvey M. Novak	04350.0015-00000	5417
7590	03-13-2003			
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER	HASHMI, ZIA R
			ART UNIT	PAPER NUMBER
			2881	

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/973,936	NOVAK ET AL
	Examiner Zia R. Hashmi	Art Unit 2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 October 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-57 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6 & 7.
- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Independent claims 1 and 57 and dependent claims 2, 4-6, 8, 10-12, 24, 26, 28, 30, 37, and 54 are rejected under U.S.C. 102(b) as being anticipated by Fogarty ( 5,969,369 ).
3. With respect to independent claims 1 and 57 and dependent claims 2, 4-6, 8, 10-12, 24, 26, 28, 30, 37, and 54, Fogarty discloses a method and apparatus for a thermal image identification system ( col. 1, line 59, col. 2, lines 64-67, and col. 4, lines 1-4 ), comprising an infrared emitting element laminate ( col. 1, lines 8-9, col. 2, line 28, and col. 4, lines 9-10 ), the laminate comprising an infrared emitting layer having a first side and a second side; a cover layer associated with the first side; and a backing layer associated with the second side ( col. 2, lines 22-32, col. 4, lines 9-18, and 12, 14, 16, and 18 in Fig. 1 and 2 ); and a power source electrically communicable with the infrared emitting device ( Abstract, lines 13-15, col. 2, lines 36-41 and Fig. 1 ). Fogarty further discloses means of securing the infrared emitting element to a target ( col. 1, lines 8-10 and col. 2, lines 64-67 ); and activating the infrared emitting element to generate infrared radiation ( col. 2, lines 6-8 and 36-42 ). Fogarty also discloses using adhesive

Art Unit: 2881

in construction of the image identification system ( col. 2, lines 31-32 ), and of a resistive element comprising filled with metal paste, paste filled with carbon and metal strip or film ( col. 4, lines 35-39 ).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Dependent claims 3, 7, 9, 13-25, 27, 29, 31-32, 34-36, and 38-56 are rejected under U.S.C. 103(a) as being unpatentable over Fogarty ( 5,969,369 ), in view of Ellis et al. ( 4,250,398 ).

6. With respect to dependent claims 13-16, 18, 21, and 31, Fogarty fails to disclose a resistive element, or an insulating layer, or a material with high infrared emissivity. Ellis et al., however, disclose a solid state electrically conductive laminate for producing infrared energy, wherein the resistive element is disposed on the surface ( col. 2, lines 46-48 and col. 3, lines 15-16 ), and the heat dispersion material with high emissivity ( col. 2, lines 49-51 ) is secured to the resistive element with a non-conductive adhesive ( col. 3, lines 50-56 ), with the support comprising of an insulating material ( col. 6, lines 3-5 ), and a second insulating layer between the infrared emitting layer and the backing layer ( col. 2, lines 53-55, col. 3, lines 57-67, and 6 in Fig. 2 ).

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine method and apparatus of Fogarty and Ellis et al. and add features like having heating material in form of an alphanumeric character, or forming conductive elements from a circuit board, or having a controller for regulating emitted infrared energy, or operating it in a pulsing mode, because Fogarty teaches ( col. 1, lines14-19 ) that devices which emit infrared radiation can be utilized as target for weaponry having infrared detection devices that "see" infrared emitting device's thermal signature.

### Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Magdaleno et al. disclose ( 5,986,581 ) a battery operated infrared marker using electrical strip of infrared radiating elements.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zia Hashmi whose telephone number is (703) 305-0419. The examiner can normally be reached between 8.30 AM- 5 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R. Lee can be reached on (703) 308-4116.

Zia Hashmi

February 23, 2003

  
JOHN R. LEE  
SUPPLYING PATENT EXAMINER  
TECHNOLOGY CENTER 2800